

FBI Laboratory Practices for Moot Court and Admissibility Hearing Exercises

1 Purpose

These practices establish the requirements and procedures for moot court and admissibility hearing exercises. These exercises will test a trainee's ability to accurately and clearly articulate qualifications as an expert and explain scientific theories, as well as the limitations of the science, discipline, and/or category(ies) of testing within the scope of the applicable Department of Justice Uniform Language for Testimony and Reports document(s) and/or the applicable FBI Approved Standards for Scientific Testimony and Report Language document(s). In addition, these exercises will test a trainee's ability to accurately and clearly explain an examination process and analysis using lay terms, as well as their resulting opinions/interpretations, within a mock courtroom setting. The ability of the trainee to appropriately defend challenges presented to both expert qualifications and scientific testimony will also be tested.

2 Scope

These practices apply to FBI Laboratory personnel who are training to become forensic examiners and as part of their job duties will be providing testimony regarding the results of their examinations; personnel who facilitate, record, and/or review training; and other personnel who are directed by Unit Chiefs and/or Executive Management to participate in a moot court/admissibility hearing exercise(s).

3 Practices

3.1 Establishing Moot Court/Admissibility Hearing Exercises

A minimum of three moot court exercises, to include one Admissibility Hearing exercise, must be successfully completed by the trainee. Training manuals may require more than three exercises to cover the expertise in a discipline and/or category(ies) of testing. See the Laboratory Operations Manual (LOM) - Practices for the Forensic Examiner Training Program for information regarding the process for establishing and modifying the required number of moot course exercises in the trainee's training plan.

The trainee must successfully complete all of the moot court/admissibility hearing exercises indicated in their training plan for a specific discipline and/or category(ies) of testing to be eligible to become a qualified and authorized examiner in that discipline and/or category(ies) of testing.

3.1.1 The Training Program Manager (TPM) and Technical Leader will determine the applicable discipline and/or category(ies) of testing to be covered in each exercise.

3.1.2 A written summary of expectations will be provided to the trainee by the TPM a minimum of 30 calendar days prior to each exercise. The summary of expectations must include:

- Objectives of the moot court/admissibility hearing exercise.
- Case requirements, when appropriate.
- Admissibility requirements, when appropriate.
- Focus of the direct examination.
- Focus of the cross examination.
- Performance-based assessment rubric - *Forensic Examiner Training Program Moot Court Exercise Rubric - Admissibility* (7-277) (Appendix A) or *Forensic Examiner Training Program Moot Court Exercise Rubric - Case Presentation* (7-278) (Appendix B), as appropriate
- An evaluation plan utilizing the performance-based rubric that outlines trainee proficiency and rating requirements to successfully complete the exercise.
- Suggested preparation for the moot court/admissibility hearing exercise.

3.1.3 The TPM will ensure preparation for the first moot court/admissibility hearing exercise includes a practice session using the performance-based assessment rubric in which feedback and suggestions for improvement are provided. This session may be video recorded and available for review by the trainee. The assessment rubric and any video recordings of practice sessions are not required to be retained within the trainee's training record.

3.1.3.1 Additional practice moot court/admissibility hearing exercise(s) may be added at any time during the training program to assist the trainee with testimony preparation.

3.2 Coordinating Moot Court/Admissibility Hearing Exercises

3.2.1 The TPM will ensure the coordination of each moot court/admissibility hearing exercise and notify the Forensic Examiner Training Program Manager (FETPM) of the anticipated exercise date. The coordination of the exercise will encompass identifying, reserving, and arranging an appropriate space to provide a mock courtroom setting. Additionally, the TPM must ensure that the exercise will be video recorded.

3.2.2 A licensed attorney will participate in moot court/admissibility hearing exercises. Any moot court/admissibility hearing exercise leading up to the final moot court exercise will have, at minimum, one licensed attorney present within one of the three roles: judge, prosecutor, or defense attorney. For the final moot court exercise, licensed attorneys will participate in all attorney roles (i.e., judge, prosecutor, and defense). The FETPM will coordinate with personnel from Office of the General Counsel (OGC) to select licensed attorneys with appropriate experience.

3.2.3 The trainee will initiate and participate in a pretrial conference with the prosecuting attorney assigned to the mock case. This may be conducted in-person or over the phone; however an in-person conference is recommended.

3.2.4 Subject Matter Experts (SMEs) in the discipline(s)/category(ies) of testing will assist the participating attorneys, as needed, with preparing for the moot court/admissibility hearing exercise as well as during the exercise.

3.2.5 To ensure the timely coordination of the moot court/admissibility hearing process among all the participants, the FETPM will provide OGC with regular trainee status reports which will indicate when a moot court/admissibility hearing is approaching within at least a six-week timeframe.

3.2.6 The confirmation of the selected moot court/admissibility hearing date, the identification of the licensed attorney(s), and the initiation of the discovery request must occur at least 30 calendar days prior to the exercise. It is recognized that extenuating circumstances can occur and impact these dates. In these instances, communication between the TPM, FETPM, and OGC must establish an appropriate alternative timeframe.

3.2.7 The trainee will be responsible for preparing and distributing the discovery packet for distribution to the participants of the moot court/admissibility hearing.

3.3 Evaluating Moot Court/Admissibility Hearing Exercises

Each moot court/admissibility hearing exercise will be evaluated by a moot court panel consisting of three evaluators, all of whom have FBI expert testimony experience. Two evaluators will be SMEs selected by the trainee's TPM, Unit Chief, and/or Technical Leader. The third evaluator will be from another unit in the FBI Laboratory and selected by the FETPM. The TPM will ensure each evaluator receives a copy of the summary of expectations (see section 3.1.2).

3.3.1 Each moot court panel member will complete the *Moot Court Exercise - Admissibility Evaluation Form* (7-279) (Appendix C) or the *Moot Court Exercise - Case Presentation Evaluation Form* (7-280) (Appendix D), as appropriate, in accordance with the established proficiency and rating level defined for that exercise. Each moot court panel member will complete the appropriate evaluation form in its entirety immediately after the conclusion of the exercise.

3.3.1.1 Notes supporting the evaluation will be recorded on, or attached to, the *Moot Court Exercise - Admissibility Evaluation Form* or the *Moot Court Exercise - Case Presentation Evaluation Form* and must be retained as official training records. A recorded evaluation rating of "Basic" or less must contain supporting examples or feedback.

3.3.1.2 Each moot court panel member will provide their evaluation form to the TPM or designee. The TPM or designee will use the *Moot Court Exercise - Admissibility Evaluator Score Tally Form* (7-281) (Appendix E) or the *Moot Court Exercise - Case Presentation Evaluator Score Tally Form* (7-282) (Appendix F), as appropriate, to record the ratings and result of the exercise.

3.3.2 The FETPM and/or the TPM will request the participating attorneys and those serving in a juror role, as applicable, provide feedback on the trainee's performance, as well as the moot court process. This feedback will be recorded on the *Forensic Examiner Training Program Moot Court Exercise - Attorney Worksheet (7- 283)* (Appendix G) or the *Forensic Examiner Training Program Moot Court Exercise - Juror Worksheet (7-284)* (Appendix H), as appropriate, reviewed with the trainee, and retained by the FETPM. A copy of completed forms will be provided to the trainee upon request.

3.4 Post-Exercise Requirements

3.4.1 The TPM will ensure the *Moot Court Exercise - Admissibility Evaluation Form* or the *Moot Court Exercise - Case Presentation Evaluation Form*, as appropriate, and the *Moot Court Exercise - Admissibility Evaluator Score Tally Form* or the *Moot Court Exercise - Case Presentation Evaluator Score Tally Form*, as appropriate, are reviewed with the trainee and that these reviews are recorded, and the forms are retained in the trainee's training record

3.4.1.1 The FETPM will ensure the *Forensic Examiner Training Program Moot Court Exercise - Attorney Worksheet* and the *Forensic Examiner Training Program Moot Court Exercise - Juror Worksheet* are reviewed with the trainee.

3.4.2 The TPM will ensure the video recording of moot court/admissibility hearing exercise is maintained with the trainee's training record.

3.4.2.1 Upon a trainee's request, a copy of the video recording of the moot court/Admissibility Hearing exercise will be provided for the trainee's review.

3.4.2.2 If the trainee discontinues the training program or is removed from the training program; the video recording will be maintained within the trainee's training record.

3.4.3 If the trainee successfully completes the moot court/admissibility hearing exercise, the TPM will ensure this is recorded in the trainee's training record.

3.4.4 If the trainee fails to successfully complete a moot court/admissibility hearing exercise, the FETPM will notify the Quality Manager in writing within one calendar day. If the FETPM is not present, the TPM will notify the Quality Manager in writing within one calendar day.

3.4.5 The FETPM will coordinate and serve on the root cause panel.

3.4.5.1 All members from the moot court panel, and other training personnel as requested by the FETPM, will serve on the root cause panel.

3.4.5.2 The Quality Manager will ensure a facilitator is selected to serve on the root cause Panel.

3.4.6 The root cause panel will meet within seven calendar days to determine the root cause(s) of the trainee's failure of the moot court/admissibility hearing exercise.

3.4.7 The root cause panel will interview the trainee and discuss the *Moot Court Exercise - Admissibility Evaluation Form* or the *Moot Court Exercise - Case Presentation Evaluation Form*, as appropriate, and the *Moot Court Exercise - Admissibility Evaluator Score Tally Form* or the *Moot Court Exercise - Case Presentation Evaluator Score Tally Form*, as appropriate, to assist in determining the root cause(s) of the failure.

3.4.8 After determining the root cause(s), the root cause panel will propose a remediation plan to the trainee's Unit Chief, trainee, TPM, and Technical Leader. The facilitator will record the root cause(s) and remediation plan in a *Corrective Action Request (7-254)* according to the LOM - Practices for Addressing a Nonconformity.

3.5 Establishing Repeat Moot Court/Admissibility Hearing Exercises

3.5.1 The trainee will have a second opportunity to successfully complete the same moot court/admissibility hearing exercise. The *Corrective Action Request* must be closed prior to the second attempt at the moot court/admissibility hearing exercise. The repeated moot court/admissibility hearing exercise will have the same case scenario although different questions may be asked.

3.5.2 If the trainee fails to successfully complete a second attempt at the same moot court/admissibility hearing exercise, the trainee will be removed from the Forensic Examiner training program.

4 Records

The following records are generated and permanently retained in the trainee's training record as a result of these practices, except as noted:

- Summary of expectations for each moot court/admissibility hearing exercise (see section 3.1.2).
- *Forensic Examiner Training Program Moot Court Exercise Rubric - Admissibility*
- *Forensic Examiner Training Program Moot Court Exercise Rubric - Case Presentation*
- *Moot Court Exercise - Admissibility Evaluation Form* and any supporting notes not included on the form
- *Moot Court Exercise - Case Presentation Evaluation Form* and any supporting notes not included on the form
- *Moot Court Exercise - Admissibility Evaluator Score Tally Form*
- *Moot Court Exercise - Case Presentation Evaluator Score Tally Form*
- *Forensic Examiner Training Program Moot Court Exercise - Attorney Worksheet* (retained by the FETPM)

- *Forensic Examiner Training Program Moot Court Exercise - Juror Worksheet* (retained by the FETPM)
- Video recording of each moot court/admissibility hearing exercise.
- If applicable, a copy of any *Corrective Action Request* and corresponding records.

5 References

FBI Laboratory Quality Assurance Manual, Federal Bureau of Investigation, Laboratory Division, latest revision.

FBI Laboratory Operations Manual, Federal Bureau of Investigation, Laboratory Division, latest revision

ISO/IEC 17025 - General Requirements for the Competence of Testing and Calibration Laboratories, International Organization for Standardization, Geneva, Switzerland, 2017.

ISO/IEC 17025:2017 - Forensic Science Testing and Calibration Laboratories Accreditation Requirements (AR 3125), ANAB, Milwaukee, WI, April 29, 2019.

ISO/IEC 17020 - Conformity Assessment - Requirements for the Operation of Various Types of Bodies Performing Inspection, International Organization for Standardization, Geneva, Switzerland, 2012

Rev. #	Issue Date	History
9	06/03/19	Added DOJ ULTR documents to section 1. Modified requirement in section 3.1.3 to require a practice session prior to the first moot court exercise. In section 3.2.1, added requirement to notify the FETPM of the exercise date. Changed requirement to 30 calendar days in section 3.2.6. Added section 3.3.1.1 requiring notes supporting the evaluation to be recorded and retained. Modified section 3.3.2 to request attorney and juror feedback. Revised section 3.4.5.2 to provide flexibility in selection of a facilitator. Updated list of records in section 4 to include supporting notes. Updated list of references in section 5. Revised evaluation and tally forms in Appendices C-F.
10	12/21/20	Minor edits throughout for clarity. 1 – corrected title for ULTR 3.4 - specified forms retained in trainee's training record 5 - added LOM and ISO/IEC 17020

Approval

Redacted - Signatures on File

Laboratory Director

Date: 12/18/2020

Quality Manager

Date: 12/18/2020

**Appendix A: Forensic Examiner Training Program Moot Court Exercise Rubric -
Admissibility (7-277)**

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**Appendix B: Forensic Examiner Training Program Moot Court Exercise Rubric - Case
Presentation (7- 278)**

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Appendix C: *Moot Court Exercise - Admissibility Evaluation Form (7-279)*

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Appendix D: *Moot Court Exercise - Case Presentation Evaluation Form (7-280)*

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Appendix E: *Moot Court Exercise – Admissibility Evaluator Score Tally Form (7-281)*

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Appendix F: Moot Court Exercise – Case Presentation Evaluator Score Tally Form (7-282)

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Appendix G: *Forensic Examiner Training Program Moot Court Exercise - Attorney Worksheet (7-283)*

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Appendix H: *Forensic Examiner Training Program Moot Court Exercise – Juror Worksheet*
(7-284)

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